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Jacec Electric, Inc. and International Brotherhood of Electrical Workers, Local Union No. 269, AFL-CIO. Case 4-CA-30879

March 6, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND COWEN

This is a refusal-to-bargain case in which the Respondent seeks to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 26, 2001, the General Counsel issued the complaint on November 29, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-19914. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 2, 2002, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On January 8, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits it has refused to bargain, but contests the validity of the certification on the basis of the Board's disposition of certain determinative challenged ballots in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any

¹ The two determinative ballot challenges in Case 4-RC-19914 were consolidated for hearing with related unfair labor practice allegations in Case 4-CA-28979. On August 27, 2001, the Board issued its decision in the consolidated proceeding affirming the administrative law judge's decision finding, inter alia, that the Respondent unlawfully laid off employee Robert Hearon, that the Respondent's challenge to his ballot should therefore be overruled, and that the Union's challenge to the ballot of employee Ann Cowan should be sustained. 335 NLRB No. 46.

representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with a facility at 434 Bridge Street, Morrisville, Pennsylvania, has been engaged as an electrical contractor. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 28, 2000, the Union was certified on November 1, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time electricians, apprentices and helpers employed by the Respondent at its 434 Bridge Street, Morrisville, Pennsylvania facility; but excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about November 9, 2001, the Union, by letter, requested the Respondent to recognize and bargain, and, since on or about the same date, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

² Chairman Hurtgen dissented in part in the underlying consolidated proceeding. He would not have found that the Respondent unlawfully laid off or discharged Hearon, and he therefore would have sustained the Respondent's challenge to Hearon's ballot. 335 NLRB No. 46, slip op. at 3-5. Chairman Hurtgen agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co.*, above. In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

Members Liebman and Cowen did not participate in the underlying proceeding. They agree, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case, and that summary judgment is therefore appropriate.

CONCLUSION OF LAW

By failing and refusing on and after November 9, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Jacee Electric, Inc., Morrisville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Electrical Workers, Local Union No. 269, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part-time electricians, apprentices and helpers employed by Respondent at its 434 Bridge Street, Morrisville, Pennsylvania facility; but excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Morrisville, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the no-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

tice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 6, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

William B. Cowen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local Union No. 269, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

conditions of employment for our employees in the bargaining unit:

All full time and regular part-time electricians, apprentices and helpers employed by us at our 434 Bridge Street, Morrisville, Pennsylvania facility; but excluding all other employees, guards and supervisors as defined in the Act.

JACEE ELECTRIC, INC.